

2. By agreement memorialized by letter dated August 4, 1997, Britannica licensed from Novartis Pharmaceuticals Corporation ("Novartis") certain copyrighted medical illustrations for use on its Encyclopaedia Britannica CD-ROM, as well on its website for a subscriber base of up to 10,000 subscribers. A true and correct copy of the August 4, 1997, letter is attached hereto as Exhibit A. ("Letter Agreement")

3. As conceded by Plaintiff, Britannica agreed to pay, and did pay, Novartis \$20,000 for this license.

4. As reflected in the Letter Agreement, there is another agreement between Britannica and Novartis dated June 1, 1997, regarding use of the copyrighted medical illustrations when Britannica's website subscriber base exceeded 10,000 members and possibly other uses.

5. Subsequent to entering into the Letter Agreement, Novartis and Britannica entered in other license agreements concerning similar content. At no time did Novartis claim that Britannica was breaching the Letter Agreement or engaging in any acts of copyright infringement. In fact, it was not until last year when Plaintiff contacted Britannica that we became aware that Plaintiff claimed that Britannica was acting in breach of a license agreement and/or committing copyright infringement.

6. Once Plaintiff raised its claims under the Letter Agreement with me, Britannica acted promptly to remove any of the illustrations from its website. Britannica has long had many similar illustrations at its disposal, and it can easily find suitable substitutes to replace the Novartis illustrations.

7. Had Plaintiff, Novartis, or any of the other alleged predecessors or successors in interest ever notified Britannica of the claims that are the subject of this suit, Britannica could

have promptly addressed them either by referring to the appropriate documentation (if it existed at the time) or by removing the illustrations. By remaining silent for the past 11 years, Plaintiff has deprived Britannica from the opportunity to mitigate any damages and/or effectively defend itself against these stale claims.

8. Britannica does not have a copy of the June 1, 1997, letter, as it has been lost or destroyed. Britannica recently moved to new offices, and in the process many old records were destroyed. Nor does Plaintiff have a copy of it. Over the past few months, as Britannica and Plaintiff discussed Plaintiff's demands for compensation under the June 1, 1997, letter, I asked Plaintiff for a copy of that letter agreement. Plaintiff was never able to provide a copy of it.

9. Any documents concerning the negotiation and execution of the Letter Agreement or the agreement memorialized by the June 1, 1997, letter have also been lost or destroyed.

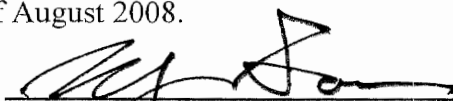
10. Bob Ciano, Britannica's former Art Director, who entered into the Letter Agreement with Novartis, is no longer an employee of Britannica. Moreover, Britannica has no knowledge of Mr. Ciano's current whereabouts.

11. In the eleven years that have passed since the Letter Agreement was entered into with Novartis, there has been significant turnover of marketing personnel at Britannica who deal with the marketing of encyclopedic content at Britannica. Accordingly, Britannica has no personal knowledge of the terms of the agreement memorialized by the June 1, 1997, letter.

12. Britannica does not currently do business with Novartis, and is not aware of the current whereabouts of anyone at Novartis with whom it negotiated the Letter Agreement or the June 1, 1997, letter, including the author of the Letter Agreement.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on this 26th day of August 2008.

A handwritten signature in black ink, appearing to read 'W. J. Bowe', is written over a horizontal line.

William J. Bowe
Vice-President & General Counsel
Encyclopaedia Britannica, Inc.
Chicago, Illinois

Novartis Pharmaceuticals Corporation
555 Morris Avenue
Summit, NJ 07901-1398

Tel 201 503 8300



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August 4, 1997

Mr. Bob Ciano
Art Director
ENCYCLOPAEDIA BRITANNICA, INC.
310 South Michigan Avenue
Chicago, IL 60504

Dear Mr. Ciano:

I am in receipt of your check in the amount of \$20,000.00 as the fee for permission to include ninety-seven plates from the Interactive Atlas of Human Anatomy by Frank H. Netter, M.D in the new editio of the Encyclopaedia Britannica CD-ROM, as well as use of these illustrations on your website subscriber base of up to 10,000 members (please refer to letter dated June 1, 1997 for additional subscribers).

You are hereby granted permission to use the illustrations above in the manner outlined. This permission is: (a) non-exclusive and non-transferable, (b) limited to the single use specified, (c) limited to the English language only, and (d) applicable to this duplication only. For subsequent uses, including additional electronic use, printing, duplications or new editions, you must reapply for permission.

Please be sure to retain the artist's signature and the copyright notice on each illustration or portion thereof. The following credit line must appear with each illustration or in the Acknowledgements section:

"Copyright 1984, Novartis. Reprinted with permission from the Interactive Atlas of Human Anatomy, illustrated by Frank H. Netter, MD. All rights reserved."

Thank you for your interest in our medical illustrations. If we can assist you in the future, please do not hesitate to call us.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Barbara A. Burger'.

Barbara A. Burger
Permissions Coordinator